

**Summary:** The defendant filed a motion to sever his trial. The Court denied the motion, finding that joinder of the offenses was proper and that the defendant would not be prejudiced by joinder of the offenses.

**Case Name:** USA v. Ervin Leo St. Claire, Jr.

**Case Number:** 4-07-cr-80

**Docket Number:** 30

**Date Filed:** 6/2/08

**Nature of Suit:**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
NORTHWESTERN DIVISION**

United States of America,	)	
	)	
Plaintiff,	)	<b>ORDER DENYING DEFENDANT’S</b>
	)	<b>MOTION TO SEVER</b>
vs.	)	
	)	Case No. 4:07-cr-080
	)	
Ervin Leo St. Claire, Jr.,	)	
	)	
	)	
Defendant.	)	

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Before the Court is the Defendant’s “Motion to Sever” filed on May 6, 2008. See Docket No. 27. The Government filed a response in opposition to the motion on May 12, 2008. See Docket No. 29. The Court denies the motion to sever for the reasons set forth below.

**I. BACKGROUND**

On September 25, 2007, the defendant, Ervin Leo St. Claire, Jr., was indicted on one count of abusive sexual contact of a child under the age of twelve for an alleged incident that occurred on or about December 17, 2006. On March 19, 2008, a superseding indictment charged St. Claire with aggravated sexual abuse of a child under the age of twelve in addition to the original abusive sexual

contact charge. The aggravated sexual abuse charge stemmed from an alleged incident that occurred in or about mid-1999 or 2000. The charges have been joined and a jury trial is scheduled to begin on July 14, 2008.

St. Claire contends that joinder of the charges is not proper and that he will be prejudiced if there is a single trial for both charges. The Government contends that the charges are properly joined and that the trial should not be severed.

## **II. LEGAL DISCUSSION**

Rule 8(a) of the Federal Rules of Criminal Procedure establishes that an “indictment or information may charge a defendant in separate counts with 2 or more offenses if the offenses charged . . . are of the same or similar character, or are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan.” Rule 8(a) “is broadly construed in favor of joinder to promote the efficient administration of justice.” United States v. Johnson, 462 F.3d 815, 821 (8th Cir. 2006).

St. Claire contends that joinder of the two offenses is not proper because they are not based on the same act or transaction. Pursuant to Rule 8(a) of the Federal Rules of Criminal Procedure, the offenses only need to be of the same or similar character for joinder to be proper. The offenses are of the same character in that each involves the alleged sexual assault of a child under the age of twelve.

If offenses have been joined, the Court may nonetheless sever the “offenses and order separate trials of counts if it appears that a defendant is prejudiced by the joinder.” United States v. Patterson, 20 F.3d 801, 805 (8th Cir. 1994); see Fed. R. Crim. P. 14. The “defendant seeking a

severance has the burden to demonstrate how a joint trial will prejudice his right to a fair trial.” Bear Stops v. United States, 204 F. Supp. 2d 1209, 1215 (D.S.D. 2002). It is not enough to show that joinder makes the case more difficult to defend. Id. Further, an allegation of a prejudicial spillover effect of evidence is not grounds for severance unless a jury could not be expected to compartmentalize the evidence as it relates to the separate counts. Id. at 1213. The decision to sever offenses and order separate trials is within the court’s discretion. Patterson, 20 F.3d at 805.

St. Claire contends that there is a serious risk that having one trial for the offenses will prevent the jury from making a reliable judgment about his guilt or innocence. St. Claire also contends that the risk of substantial prejudice from the spillover effect of the two charges necessitates separate trials because this is not a case in which the jury will be able to compartmentalize the evidence. St. Claire has not provided, and the Court has not found, any evidence that indicates that the jury will be unable to make a reliable judgment about his guilt or innocence or that it will have difficulty compartmentalizing the two offenses. The Court finds that the offenses have their own set of facts and similar, but not identical, elements that the jury will be able to easily compartmentalize.

St. Claire also contends that he will be prejudiced if he does not receive a separate trial for each offense because the jury may use the evidence of one crime to infer a criminal disposition and find him guilty of the other crime. St. Claire’s argument fails because even if he is granted separate trials, evidence of one of the offenses would be admissible in a separate trial for the other offense pursuant to Rule 414 of the Federal Rules of Evidence.

Generally, evidence of a defendant’s prior bad acts is not admissible to prove his character or propensity to commit a crime. United States v. Gabe, 237 F.3d 954, 959 (8th Cir. 2001); see Fed.

R. Evid. 404(b). However, in “a criminal case in which the defendant is accused of an offense of child molestation, evidence of the defendant’s commission of another offense . . . of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant.” Fed. R. Evid. 414(a). The legislative history of Rule 414 “indicates that Congress intended to allow admission not only of prior convictions for sexual offenses, but also of uncharged conduct. Johnson v. Elk Lake School Dist., 283 F.3d 138, 151 (3d Cir. 2002); see 140 Cong. Rec. 23,603 (1994) (Statement of Rep. Molinari) (“The practical effect of the new rules is to put evidence of uncharged offenses in sexual assault and child molestation cases on the same footing as other types of relevant evidence that are not subject to a special exclusionary rule.”).

It is well-established that a court considering the admissibility of Rule 414 evidence must first determine whether the evidence has probative value because there is strong legislative judgment that evidence of prior sexual offenses should ordinarily be admissible. Gabe, 237 F.3d at 959. A prior offense has probative value if it has similarities to the charged offense concerning the age of the victims, the relationship between the victims and the defendant, and the sexual nature of the offense. See United States v. Withorn, 204 F.3d 790 (8th Cir. 2000). “Where evidence that a defendant had committed one crime would be probative and thus admissible at the defendant’s separate trial for another crime, the defendant does not suffer any additional prejudice if the two crimes are tried together.” United States v. Rock, 282 F.3d 548, 552 (8th Cir. 2002) (quoting United States v. Rodgers, 732 F.2d 625, 630 (8th Cir. 1984)).

The Court finds that Rule 414(a) evidence in this case is probative of St. Claire’s sexual interest in children. Therefore, pursuant to Rule 414 of the Federal Rules of Evidence, in a trial for one of St. Claire’s child molestation charges, evidence of St. Claire’s other child molestation charge

would be admissible. Accordingly, St. Claire will not suffer prejudice if the sexual offenses are tried together. Because a jury will be able to compartmentalize the evidence of the two offenses, and because evidence of one offense would be admissible in a trial for the other offense, the Court finds that St. Claire has failed to meet his burden to show how a joint trial will prejudice his right to a fair trial.

### **III. CONCLUSION**

The Court finds that joinder of the offenses St. Claire was charged with in the superseding indictment is proper and that St. Claire will not be prejudiced by joinder of the offenses. Thus, the Court **DENIES** the Defendant's Motion to Sever. (Docket No. 27).

**IT IS SO ORDERED.**

Dated this 2nd day of June, 2008.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge  
United States District Court